

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

LEON ATCHLEY, as Administrator for the
Estate of Jonathan Duane Atchley,

Plaintiff,

v.

CITY OF SALLISAW,

SALLISAW POLICE DEPARTMENT, and

BLAINE GRIFFEY, in his Official and
Individual Capacities,

Defendants,

Case No. CIV-20-018-Raw

ORDER

On April 8, 2020, the court entered an Order granting the City's motion for partial dismissal and deeming confessed the Police Department's motion for partial dismissal. The court dismissed the state law claims against the City, the Police Department, and Officer Griffey in his official capacity. The only remaining state law claims are against Officer Griffey in his individual capacity. The motions did not seek dismissal of the § 1983 claims, but the City argued, and the court agreed, that those claims would be analyzed pursuant to the Fourth Amendment. The court then allowed Plaintiff to file an Amended Complaint to add another § 1983 claim against Officer Griffey in his individual capacity. Plaintiff filed his First Amended Complaint on April 29, 2020.

Now before the court is the City's motion to dismiss the Amended Complaint. The City first notes that Plaintiff again asserts state law claims against it. As the court has already dismissed all state law claims against the City, the Police Department, and Officer Griffey in his

official capacity based upon Oklahoma's Governmental Tort Claims Act, any such claims are stricken from the First Amended Complaint. To this extent, the City's motion to dismiss is granted. Next, the City points out that Plaintiff again cites to the Fourth and Fourteenth Amendments. As has already been determined, the Fourth Amendment is applicable in this case.

The City now moves for dismissal of the § 1983 claims against it, arguing that Plaintiff has not alleged facts sufficient to establish an unconstitutional policy, custom or practice, a failure to train or supervise, or a failure to discipline. The court finds Plaintiff's allegations sufficient under Rule 8(a)(2) of the Federal Rules of Civil Procedure. *See Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012) (citation omitted) ("Rule 8(a)(2) still lives."). The City's motion is denied as to the § 1983 claims.

Summary

The City's motion [Docket No. 29] is granted as to the state law claims and denied as to the § 1983 claims. As the court has previously dismissed all state law claims against the City, the Police Department, and Officer Griffey in his official capacity, any such claims are stricken from the First Amended Complaint. The state law claims against Officer Griffey in his individual capacity remain. The § 1983 claims also remain and will be analyzed pursuant to the Fourth Amendment.

IT IS SO ORDERED this 24th day of June, 2020.



THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA